UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARBIE REED,	**Index No.:**
Plaintiff,	
-against-	**COMPLAINT**
ROBERT A. MCDONALD, Secretary of Veterans Affairs,	**Plaintiff Demands Trial by Jury**
Defendant.	

Plaintiff, BARBIE REED ("Plaintiff"), by and through her attorneys, LEVINE & BLIT, PLLC, as and for her complaint against the defendant, ROBERT A. MCDONALD, Secretary of Veterans Affairs ("Defendant"), alleges upon information and belief:

NATURE OF THE ACTION

1. This action is brought to remedy unlawful discrimination based upon sex and disability, hostile work environment harassment, failure to provide a reasonable accommodation, and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended ("Title VII") and the Rehabilitation Act of 1973, as amended ("Rehabilitation Act").

2. Plaintiff seeks injunctive and declaratory relief from Defendant's unlawful actions; compensatory damages for emotional distress and mental anguish; punitive damages; reasonable attorneys' fees; costs of this action to the fullest extent of the law; and any such other and further relief as this Court may deem just and proper.

JURISDICTION AND VENUE

3. Jurisdiction of this Court is appropriate, pursuant to 28 U.S.C. §§1331 and 1367.

4. Venue of this Court is appropriate, pursuant to 28 U.S.C. §1391, because Defendant is a resident of the Southern District of the State of New York, which is where this Court is located.

5. Plaintiff has complied fully with all administrative and jurisdictional prerequisites and brings this action within ninety (90) days of receiving a Final Agency Decision from the Department of Veterans Affairs, Office of Employment Discrimination Complaint Adjudication ("OEDCA").

THE PARTIES

6. Plaintiff is a female residing in Westchester County in the State of New York.

7. Plaintiff was employed as a painter in the Environmental Management Services ("EMS") department of the VA Hudson Valley Healthcare System's Montrose campus ("Montrose") located at 2094 Albany Post Road, Montrose, New York 10548.

8. Defendant is the Secretary of Veterans Affairs, the head of the United States Department of Veterans Affairs, including Montrose, and is responsible for administering benefit programs for veterans, their families, and their survivors.

9. At all times relevant to this complaint of discrimination, Defendant maintained an employment relationship with fifteen (15) or more individuals, and is an "employer" within the meaning of applicable federal, state and local laws.

10. At all times relevant to this complaint of discrimination, Plaintiff was an "employee" of Defendant within the meaning of applicable federal, state and local laws.

11. At all times relevant to this complaint of discrimination, Melvin Mosley ("Mr. Mosley") served as a supervisor for Defendant, in the EMS department of Montrose and served in a position of authority over Plaintiff throughout her employment at Montrose and held the

authority to undertake tangible employment decisions and/or control the terms and conditions of her employment.

12. At all times relevant to this complaint of discrimination, Terry Vogt ("Mr. Vogt") was the head chief of the EMS department of Montrose and served in a position of authority over Plaintiff throughout her employment at Montrose and held the authority to undertake tangible employment decisions and/or control the terms and conditions of her employment.

13. At all times relevant to this complaint of discrimination, Calvin Callaway ("Mr. Callaway") was a supervisor in the EMS department of Montrose and served in a position of authority over Plaintiff throughout her employment at Montrose and held the authority to undertake tangible employment decisions and/or control the terms and conditions of her employment.

14. At all times relevant to this complaint, Glenn Cook ("Mr. Cook") was a supervisor in the EMS department of Montrose and served in a position of authority over Plaintiff throughout her employment at Montrose and held the authority to undertake tangible employment decisions and/or control the terms and conditions of her employment.

15. Upon information and belief, at all times relevant to this complaint, John Yarbough ("Mr. Yarbough") was an employee in the housekeeping section of the EMS department of Montrose, and as such, was regularly in contact with Plaintiff on a daily basis.

16. At all times relevant to this complaint of discrimination, Plaintiff maintained the requisite experience, skills, or qualifications for her position of employment position with Montrose.

17. At all times relevant to this complaint, Plaintiff was diagnosed with post-traumatic stress disorder ("PTSD") and severe anxiety and is therefore a "qualified individual with a disability" within the meaning of applicable laws.

FACTUAL ALLEGATIONS

18. On or about November 2010, Plaintiff was hired by Defendant as a painter in the VA's Montrose campus's EMS department.

19. Plaintiff was previously diagnosed with PTSD and severe anxiety and had indicated to Montrose management on several occasions of her need to take medication. In fact, Montrose management knew that she regularly attended an employee assistance program to deal the PTSD and anxiety.

20. On or about June 5, 2014, Plaintiff drove home during her lunch break and was shocked to discover that her coworker, Mr. Yarbough, was waiting for her in her driveway. She immediately became uncomfortable because his visit was unannounced and she had never previously invited him over.

21. Mr. Yarbough approached Plaintiff and explained that they had been acquainted for several years, then repeatedly asked if she would be his "special friend."

22. Plaintiff was shocked by his proposition and questioned if he meant a sexual relationship. Mr. Yarbough responded by continuing to stare at Plaintiff and commented that his current marriage was "complacent and stale." He also repeatedly told Plaintiff "this conversation is to stay between us and nobody else."

23. On or about June 6, 2014, Plaintiff complained to a supervisor, Mr. Mosley, of the incident with Mr. Yarbough at her home and requested that Mr. Mosley arrange a meeting

between the three of them to ensure that it would never happen again. Mr. Mosley then stated that "he would think about it," but failed to do anything further.

24. Immediately after Plaintiff had met with Mr. Mosley, Mr. Yarbough approached Plaintiff outside of Mr. Mosley's office and shouted at her in a threatening manner, "Why did you tell… why did you tell." Only after hearing Mr. Yarbough screaming, Mr. Mosley stepped out of his office and attempted to resolve the disturbance.

25. On or about June 9, 2014, Plaintiff met with her senior supervisor, Mr. Vogt, to complain of the above mentioned incidents with Mr. Yarbough and to request that a change be made to limit any further interactions with him. Mr. Vogt responded by transferring Mr. Yarbough to the VA Hudson Valley Health Care System's Castle Point campus ("Castle Point") to resolve the above mentioned incidents.

26. However, only a week later, Plaintiff was shocked to discover that the Montrose management had transferred Mr. Yarbough back to the Montrose campus without her knowledge.

27. Plaintiff again expressed her concerns for her safety because Mr. Yarbough's shift overlapped with Plaintiff's shift.

28. Mr. Yarbough again harassed Plaintiff by approaching near her and brushing past her chest under the premise of greeting another employee. Plaintiff only managed to avoid physical contact by jumping out of the way.

29. Due to the severe anxiety precipitated by these interactions, Plaintiff was forced to walk different routes throughout the rest of her employment, including outside and around the building where Mr. Yarbough worked, just to avoid any further contact with him.

30. On or about October 8, 2014, Mr. Yarbough again harassed Plaintiff by standing directly in front of the only door to the paint shop area, where she worked, at the end of her shift. This caused Plaintiff to suffer immense anxiety and she became fearful for her safety.

31. Plaintiff called Mr. Callaway, who was also outside the door, and begged him to have Mr. Yarbough move away from the area in front of the door so that she could leave the building without seeing him.

32. On or about October 9, 2014, Plaintiff met with Mr. Callaway and requested that Mr. Yarbough have no further contact with her and that Mr. Yarbough not be permitted to be near the door to the paint shop area at the close of her shift.

33. In response, Mr. Callaway informed Plaintiff that Mr. Yarbough "has every right to stand anywhere he wants, and nobody can dictate where he can or cannot stand, and to get over it."

34. On the same day, Plaintiff met with Mr. Mosley to again request that Mr. Yarbough have no further contact with her and that Mr. Yarbough not be permitted to be near the door to the paint shop area at the close of her shift.

35. In response, Mr. Mosley simply stated that Plaintiff needed to talk to someone about her panic attacks.

36. On or about October 16, 2014, as Plaintiff was pushing a cart down a hallway, Mr. Yarbough stepped directly into her path and stared at her. Despite her request that he move out of the way, Mr. Yarbough continued to stare at Plaintiff as she passed by. Plaintiff subsequently suffered a panic attack due to the intimidation.

37. Plaintiff then met with Montrose management and explained how her repeated encounters with Mr. Yarbough were increasingly causing her severe anxiety. Plaintiff then went to the police department to file a complaint.

38. On or about October 17, 2014, Mr. Vogt told Plaintiff that he had moved Mr. Yarbough to Castle Point for a second time, but did not explain why Mr. Yarbough was permitted to return in the first place.

39. Montrose management failed to properly monitor the workplace, failed to respond to Plaintiff's repeated complaints of harassment, failed to provide an effective system for registering complaints, and ultimately failed to prevent harassment from taking place.

40. On or about October 16, 2014, Plaintiff commenced an EEO complaint of discrimination and hostile work environment harassment based upon sex and disability. On or about December 19, 2014, a formal complaint was filed with the VA's Office of Resolution Management (ORM).

41. On or about December 2, 2014, a separate administrative investigation was convened by Montrose. As a result, Plaintiff was forced to give sworn testimony on two separate occasions, but was precluded at the time from accessing the details acquired in the separate administrative investigation.

42. Montrose failed to finalize a report on its findings until March 2, 2016 and thereby permitted the administrative investigation to remain unresolved for over a year. The delay in releasing the final decision constituted a blatant violation of Montrose's own policies.

43. Furthermore, Montrose's refusal to resolve the administrative investigation prevented Plaintiff from accessing vital information and was intended to discourage her from

pursuing her claims of discrimination and harassment. The withheld information also prejudiced any attempt to fairly mediate her claims, as required by the ORM's EEO process.

44. On or about October 2015, to punish Plaintiff for having commenced a formal complaint of discrimination and harassment, Defendant permanently assigned Plaintiff to the Castle Point campus and returned Mr. Yarbough to the Montrose campus.

45. On December 16, 2015, the OEDCA issued a final agency decision improperly denying Plaintiff's claims, while ignoring critical evidence and testimony provided during the ORM investigation. The decision thereby foreclosed any possibility of engaging in a fair mediation.

FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Discrimination based upon Sex in Violation of Title VII)

46. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 45, as if set forth fully herein.

47. At all times relevant to this action, Plaintiff was an employee of Defendant entitled to protection in her employment from discrimination based upon sex within the meaning of Title VII.

48. Plaintiff was qualified to hold her position of employment with Defendant and had satisfactorily performed the duties required by her position of employment with Defendant.

49. But for Plaintiff being a female, and therefore a member of a protected class pursuant to Title VII, she would not have been subjected to the unlawful acts and practices as alleged above.

50. Pursuant to the unlawful acts and practices as alleged above, Montrose management condoned a pattern of discrimination and harassment based upon Plaintiff's sex.

As such, Defendant knew or should have known of the unlawful acts and practices as alleged above, yet failed to act promptly to prevent or end the discrimination and harassment.

51. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

52. Defendant acted with malice and/or with reckless disregard of Plaintiff's statutorily protected civil rights, and, as such, Defendant should be subjected to punitive damages to deter future unlawful conduct similar to the conduct alleged herein.

SECOND CAUSE OF ACTION AGAINST DEFENDANT
(Hostile Work Environment Harassment based upon Sex in Violation of Title VII)

53. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 52, as if set forth fully herein.

54. At all times relevant to this action, Plaintiff was an employee of Defendant entitled to protection in her employment from harassment based upon her sex within the meaning of Title VII.

55. Plaintiff was qualified to hold her position of employment with Defendant and had satisfactorily performed the duties required by her position of employment with Defendant.

56. But for Plaintiff being a female, and therefore a member of a protected class pursuant to Title VII, she would not have been subjected to the unlawful acts and practices as alleged above.

57. Plaintiff's workplace became sufficiently permeated with discriminatory intimidation that was both severe and pervasive.

58. Montrose management knew of the unlawful acts and practices as alleged above, yet failed to act promptly to prevent or end the hostile work environment created thereby.

59. Even when potentially corrective action was taken, it was inexplicably reversed without explanation or notice to Plaintiff. Therefore, Montrose condoned the hostile work environment harassment that Plaintiff was subjected to.

60. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

61. Defendant acted with malice and/or with reckless disregard of Plaintiff's statutorily protected civil rights, and, as such, Defendant should be subjected to punitive damages to deter future unlawful conduct similar to the conduct alleged herein.

THIRD CAUSE OF ACTION AGAINST DEFENDANT
(Retaliation in Violation of Title VII)

62. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 61, as if set forth fully herein.

63. At all times relevant to this action, Defendant was an employer within the meaning of Title VII and Plaintiff was an employee entitled to protection in her employment from discrimination based upon sex within the meaning of Title VII.

64. Pursuant to the unlawful acts and practices as alleged above, Plaintiff issued complaints to her supervisors of the discrimination and harassment based upon her sex that she was forced to endure, and had thus engaged in a protected activity pursuant to Title VII.

65. Defendant knew or should have known of the unlawful acts and practices as alleged above and of Plaintiff's complaints regarding the same, yet failed to act promptly to prevent or end the discrimination and harassment.

66. Instead of taking steps to ensure a discrimination-free workplace, Defendant condoned and reinforced the unlawful acts and practices as alleged above and retaliated against Plaintiff by failing to promptly implement corrective measures and/or failing to offer an appropriate resolution to the discrimination that she suffered and the hostile work environment that was created thereby.

67. Furthermore, Defendant failed to timely complete the administrative investigation and intentionally withheld the results, in violation of Defendant's own policy requiring its completion within 45 days, to discourage her from pursuing her claims of discrimination and harassment. The withheld information prejudiced any attempt to fairly mediate her claims, as required by the ORM's EEO process.

68. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

69. Defendant acted with malice and/or with reckless disregard of Plaintiff's statutorily protected civil rights, and, as such, Defendant should be subjected to punitive damages to deter future unlawful conduct similar to the conduct alleged herein.

FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(Discrimination based upon Disability in Violation of the Rehabilitation Act)

70. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 69, as if set forth fully herein.

71. At all times relevant to this action, Plaintiff suffered from PTSD and severe anxiety and was therefore a member of a protected class pursuant to the Rehabilitation Act.

72. At all times relevant to this action, Plaintiff was an employee of Defendant entitled to protection in her employment from discrimination based upon disability within the meaning of the Rehabilitation Act.

73. Plaintiff was qualified to hold her position of employment with Defendant, with or without an accommodation, and had satisfactorily performed the duties required by her position of employment with Defendant.

74. Defendant was aware of Plaintiff's disability through [[[prior incidents of panic attacks and]]] comments and suggestions by Montrose supervisors regarding her panic attacks.

75. Pursuant to the unlawful acts and practices as alleged above, Montrose management condoned a pattern of discrimination and harassment based upon Plaintiff's disability. As such, Defendant knew or should have known of the unlawful acts and practices as alleged above, yet failed to act promptly to prevent or end the discrimination and harassment.

76. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

FIFTH CAUSE OF ACTION AGAINST DEFENDANT
(Failure to Provide a Reasonable Accommodation in Violation of the Rehabilitation Act)

77. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 76, as if set forth fully herein.

78. At all times relevant to this action, Defendant was an employer within the meaning of the Rehabilitation Act and therefore is required to engage in an interactive process to provide reasonable accommodations to qualified individuals with disabilities who are employees.

79. At all times relevant to this action, Plaintiff was an employee of Defendant who suffered from PTSD and severe anxiety and was therefore a qualified individual with disabilities pursuant to the Rehabilitation Act.

80. Plaintiff was qualified to hold her position of employment with Defendant, with or without an accommodation, and had satisfactorily performed the duties required by her position of employment with Defendant.

81. Defendant was aware of Plaintiff's disability through [[[prior incidents of panic attacks and]]] comments and suggestions by Montrose supervisors regarding her panic attacks.

82. Defendant had further notice of Plaintiff's disabilities when she complained to and requested a reasonable accommodation from Montrose management due to her escalating stress and anxiety as a result of the unlawful acts and practices as alleged above.

83. Instead of taking steps to engage in an interactive process, Defendant condoned and reinforced the unlawful acts and practices as alleged above by failing to promptly implement any accommodations for Plaintiff's disabilities and/or failing to uphold any accommodations that might have been implemented.

84. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

SIXTH CAUSE OF ACTION AGAINST DEFENDANT
(Retaliation in Violation of the Rehabilitation Act)

85. Plaintiff hereby repeats and realleges each allegation contained in paragraphs 1 through 84, as if set forth fully herein.

86. At all times relevant to this action, Defendant was an employer within the meaning of the Rehabilitation Act and Plaintiff was an employee entitled to protection in her employment from discrimination based upon sex within the meaning of the Rehabilitation Act.

87. Pursuant to the unlawful acts and practices as alleged above, Plaintiff issued complaints to her supervisors of discrimination based upon her disability and of Defendant's failure to reasonable accommodate, and had thus engaged in a protected activity pursuant to the Rehabilitation Act.

88. Defendant knew or should have known of the unlawful acts and practices as alleged above and of Plaintiff's complaints regarding the same, yet failed to act promptly to prevent or end the discrimination or to provide a reasonable accommodation.

89. Instead of taking steps to ensure a discrimination-free workplace, Defendant condoned and reinforced the unlawful acts and practices as alleged above and retaliated against Plaintiff by failing to promptly implement corrective measures, failing to promptly implement any accommodations for Plaintiff's disabilities, and/or failing to uphold any accommodations that might have been implemented.

90. Furthermore, Defendant failed to timely complete the administrative investigation and intentionally withheld the results, in violation of Defendant's own policy requiring its completion within 45 days, to discourage her from pursuing her claims of discrimination and failure to provide a reasonable accommodation. The withheld information prejudiced any attempt to fairly mediate her claims, as required by the ORM's EEO process.

91. As a proximate result of Defendant's unlawful acts and practices as alleged above, Plaintiff has suffered and continues to suffer substantial losses, and is entitled to monetary and compensatory damages for, *inter alia*, humiliation, mental anguish, and severe and lasting emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment containing the following relief:

(a) An order declaring that the acts and practices complained of herein are in violation of Title VII and the Rehabilitation Act;

(b) An order enjoining Defendant from engaging in future unlawful acts of discrimination, harassment and retaliation;

(c) An order compelling Defendant to pay Plaintiff monetary damages for lost past and future wages, in an amount to be determined at trial, caused by Defendant's unlawful actions;

(d) An order compelling Defendant to pay Plaintiff compensatory damages, in an amount to be determined at trial, as a result of the severe mental anguish, emotional distress, humiliation, and loss of reputation, among other damages, caused by Defendant's unlawful actions;

(e) An order compelling Defendant to pay punitive damages, in an amount to be determined at trial, to Plaintiff as a result of Defendant's intentional and reckless disregard of Plaintiff's protected civil rights;

(f) An order awarding Plaintiff such interest as is allowed by law;

(g) An order compelling Defendant to pay Plaintiff's reasonable attorneys' fees and costs of this action; and

(h) Any such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury in this action.

Dated: March 15, 2016
New York, New York

Respectfully Submitted,
LEVINE & BLIT, PLLC

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